

House Bill 33
Revise 9-1-1 Emergency Phone System Laws

Proponent Testimony by Jeff Brandt, Deputy Chief Information Officer (CIO)
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Department of Administration
444-3988

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House Appropriations Committee
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Mr. Chairman, members of the committee, for the record my name is Jeff Brandt. I am the Deputy Chief Information Officer (CIO) of the Information Technology Services Division (ITSD), within the Department of Administration. The Statewide 9-1-1 Program is administered by the Department. I would like to introduce Ms. Becky Berger, the manager of the Statewide 9-1-1 Program.

The bill before you today contains 4 changes to existing 9-1-1 statute that are primarily 'housekeeping', or clarifications, to existing statute. The changes have been reviewed and endorsed by the 9-1-1 Advisory Council.

This bill was first heard in the House Federal Relations, Energy and Telecommunications Committee and passed out of the Committee 11-1. It passed 2nd reading in the House 87-13.

I want to make sure this bill is not confused with another 9-1-1 bill--House Bill 27 (Establish Wireless Enhanced 9-1-1 System), a bill that would increase the monthly 9-1-1 fee on telephones from \$.50 to \$1.00. There is no fee increase and no new FTEs associated with this bill.

Because this bill has already had a hearing, I will limit my comments to the section of the bill that causes the fiscal impact bill but I have included my testimony on all sections of the bill for your information.

Although there are four changes to existing statute in this bill, the fiscal note results from the change to the section that deposits 9-1-1 fees in the General Fund for the State's administrative costs. This change would ensure all 9-1-1 fees are deposited in 9-1-1 special revenue accounts and ultimately distributed to the county 9-1-1 jurisdictions. Under current statute, remittance of 9-1-1 fees and corresponding general fund deposits have outpaced the general fund budget appropriation needed by the department to administer the program, resulting in 9-1-1 funds being "stranded" in the general fund. As you will see in the Fiscal Note, this change will ensure that estimated 9-1-1 remittances of \$118,049 and \$136,602 in FY08 and FY09, respectively, will be distributed to the county 9-1-1 jurisdictions. Although the change impacts the General Fund, the funds in question were originally collected to be distributed to the local 9-1-1 jurisdictions that provide 9-1-1 services.

This change is important because recently enacted federal legislation provides that any state or local jurisdiction that diverts 9-1-1 fees will be ineligible for federal funding. In recent years, private grants and federal funding have contributed significantly to the progress of our

deployment of enhanced landline and wireless 9-1-1 in Montana. We have received over \$4 million in federal funding for projects currently underway. The State of Montana and local 9-1-1 jurisdictions want to continue to be eligible for these kinds of funding opportunities.

This proposal would ensure that all 9-1-1 fees collected from citizens go to providing 9-1-1 services and administering the program. We believe that the legislative intent of the original 9-1-1 legislation was that all 9-1-1 fees go to providing 9-1-1 services.

The **second** change deals with a sunset clause in the current statute. This bill extends a sunset date benefiting low population rural areas from 2007 to 2011. Current law provides that 84% of the enhanced 9-1-1 fees be distributed to cities and counties on a per capita basis. The remaining 16% is distributed evenly to counties that have 1% or less of the total population of the state. This "16% clause" allows those counties with less than 1% of the population to receive additional fees to help deploy enhanced 9-1-1 services. Costs incurred by rural counties deploying enhanced 9-1-1 are the same or sometimes higher than those incurred by larger counties.

Forty counties in Montana have less than 1% of the state's population. In today's mobile society, it is important that all areas of Montana have enhanced 9-1-1. As our families, friends and co-workers travel Montana for work or pleasure, we have come to expect that if we dial 9-1-1, we will receive assistance. Montana has made major progress in deploying enhanced and wireless 9-1-1; however, rural areas still struggle due to lack of funding and resources. The "16% clause" for rural areas assists in that deployment. Based on the current deployment schedule, one hundred percent deployment is expected by 2011, and the rural 9-1-1 jurisdictions should then be able to meet their monthly recurring costs to provide enhanced 9-1-1.

The **third** change addresses the growing use of pre-paid cell phones. A pre-paid cell phone is a pay-as-you-go service that has no monthly billing. This change would provide two options to pre-paid cell phone companies for remitting 9-1-1 fees.

The prepaid proposal was met with some opposition during the original hearing. This section proposes to provide two options for prepaid cell phone to remit 9-1-1 fees. The proposal provides options, or a menu approach, for service providers who are subject to the current 9-1-1 fee. The proposal was a good faith effort by the Department to clarify the current law and provide a menu approach for service providers to remit 9-1-1 revenues.

The existing statute imposes the 9-1-1 fee on *"telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services"*. A legal opinion issued by the Department of Revenue has determined that pre-paid cell phones are subject to the fee. A legal opinion issued by our own department also feels the current statute is clear--pre-paid cell phones are subject to the 9-1-1 fee.

28 states are collecting fees for pre-paid phones; 6 states are working on legislation, and 14 have not addressed pre-paid phones

This amendment provides two options for pre-paid service providers to collect the 9-1-1 fees for pre-paid services. Under this proposal, a pre-paid wireless telephone service provider will have the option to remit an amount equal to the fee under one of the following options:

Option 1 provides that on a monthly basis, the service provider will remit the fees from each active pre-paid customer whose account balances is equal to or greater than the 50 cent fee specified in current statute. In other words, if an account has more than 50 cents in the account at the end of the month, the monthly fee is assessed.

Option 2 proposes that the pre-paid service provider shall divide the total intrastate monthly revenues by the *average revenue per pre-paid user* (ARPU) of the wireless provider to determine the number of pre-paid subscribers. The number of subscribers would be subject to the monthly 9-1-1 fee. This option does not specify how the fee will be assessed or whether it will be collected at the point of sale or in some other fashion. It simply requires the pre-paid wireless provider to remit the fee.

If the 9-1-1 fees aren't applied to pre-paid phones, two circumstances could result:

- if providers of pre-paid wireless services (typically large out-of-state corporations) are exempt from the 9-1-1 fee, the citizens of Montana will have to pick up the burden of the lost revenue now being remitted by the pre-paid service providers.
- if pre-paid wireless services are exempt from the 9-1-1 fee, we risk the unintended consequence of a wireless provider offering a pre-paid wireless service simply as a means to avoid the requirement to remit the fee.

The **final** amendment clarifies penalty and interest laws so they are consistent with other miscellaneous taxes imposed by the Department of Revenue. Current 9-1-1 statutes are inconsistent or unclear with respect to DOR penalty and interest processes. This amendment will allow consistent enforcement by the department.

I can sum up my testimony in a few short sentences:

- Our goal is to provide 9-1-1 services, state-wide, regardless of whether or not you live in a large city, small town, or out in the country;
- Our goal is to ensure that all 9-1-1 fees collected from our citizens go to providing 9-1-1 services, and not be left stranded in an unrelated fund (the general fund);
- Our goal is to ensure any phone that can place an emergency call by dialing 9-1-1 also contributes 50 cents per month towards the cost of providing these services;
- And finally, our goal is to implement consistent procedures for penalties and interest, regardless of the type of miscellaneous tax in question.

I urge your support for this legislation. I am available to answer any questions you may have.

Thank you.